

29. The gas-producing composition according to claim 14, wherein the noble metal is selected from the group consisting of palladium, ruthenium, rhenium, platinum, rhodium and oxides of the noble metals.

30. The gas-producing composition according to claim 16, wherein the aminotetrazone and salts of aminotetrazole are a combination of 5-aminotetrazole and salts of 5-aminotetra-
zole.--

REMARKS

Claims 1-25 are pending in the application. Claims 5, 6, 8, 12, 13, 15 and 17-25 have been withdrawn from consideration by the Examiner. Claims 1-4, 7, 9-11, 14 and 16 are amended. Claims 26-30 are added. Support for these amendments appears in the original claims and throughout the specification.

Applicant inadvertently failed to incorporate amendments to the claims as set forth in the Preliminary Amendment filed August 18, 1997, in the Amendment filed January 21, 2000. Applicant now submits a Second Amendment which properly incorporates previous amendments to the claims as set forth in the Preliminary Amendment filed August 18, 1997. Applicant requests that the Amendment filed January 21, 2000, not be entered into the application and that the present Second Amendment be considered by the Examiner to correct this error. Entry of the Amendment is respectfully requested.

35 U.S.C. § 112, second paragraph

Claims 1-4, 7, 9-11, 14 and 16 are rejected under 35 U.S.C. § 112, second paragraph. This rejection is traversed.

(A) The Office Action states that the terms "characterized in that", "preferably", "optionally also" "derivatives" are indefinite. These terms have been deleted from the above claims. The claims now use the term "comprising" in place of the term "characterized in that".

(B) Claim 1 has been amended to include proper markush language.

(C) The term "(fuel)" has been deleted from the claims.

(D) In claim 2, the tetrazole derivatives are specifically defined by a chemical formula present in the claim and thus the term "derivatives" refers to definite compounds.

Applicant submits that the claims as amended herein would be readily understood by one of ordinary skill in the art upon review of the present specification. Reconsideration and withdrawal of the rejections are respectfully requested.

35 U.S.C. § 103(a)

Claims 1-4, 7, 9-11, 14 and 16 are rejected under 35 U.S.C. § 103(a) over Blau, et al, in view of Lund, et al, Wardle, et al, Highsmith, et al and Yoshida, et al. This rejection is traversed.

Blau, et al disclose a method of preparing anhydrous tetrazole gas generant compositions. The Examiner relies on the disclosure of Lund, et al at column 5, lines 1-50, and

Wardle, et al, Highsmith, et al and Yoshida for the disclosure of oxidizers.

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." (*In re Fritch*, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) quoting *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988).

There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge can not come from the applicant's invention itself. See *In re Oetiker*, 24 USPQ2d, 1443, 1446 (Fed. Cir. 1992). Simplicity and hindsight are not proper criteria for resolving the issue of obviousness, see *In re Horn*, 203 USPQ 969, 971 (CCPA 1979). To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher, see *W.I. Gore & Associates, Inc. v. Garlock, Inc.*, 220 USPQ 303, 312-13 (Fed. Cir. 1983). In *Ex parte Obukowicz*, 27 U.S.P.Q.2d 1063, 1065 (B.P.A.I. 1992), it was recognized that given the teachings in appellants' specification one could theoretically explain the technological rationale for the

claimed invention using selected teachings from the references. This approach, however, has been criticized by our reviewing court as hindsight reconstruction. See *In re Fine*, *supra*, 837 F.2d at 1075, 5 USPQ2d at 1600. See also *In re Sernaker*, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983).

The Office Action inappropriately relies on hindsight and knowledge of applicant's disclosure to arrive at the invention as claimed.

Blau et al, alone or in combination would not have disclosed or suggested the composition as claimed or its non-toxic, azide free advantages (specification page 4, lines 17-25). The compositions of the present invention can be safely used in car air bag systems.

Reconsideration and withdrawal of the rejection are respectfully requested.

Should the Examiner require anything further, he is requested to contact applicants' undersigned attorney at the telephone number listed below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 01-2135 and please credit any excess fees to such deposit account.

Respectfully submitted,

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